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*Editor:* B. A. MALLAL. *Asst. Editor:* AHMAD IBRAHIM, B.A. (CANTAB.).

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# FEDERATION REPORTS.

## MARTIN RHIENUS v. SHER SINGH.

[Court of Appeal (Willan, C.J., Pretheroe, J. and Spenser-Wilkinson, J.) June 23, 1949]

[F.M.—Civil Appeal No. 36 of 1948]

*Statement made in the course of a police investigation—Whether absolutely privileged—Police Report—Criminal Procedure Code Ss. 107 and 112.*

The question raised in this case was whether the statement made by the respondent was a police report under S. 107 or a statement to the Police under S. 112 of the Criminal Procedure Code.

Held, (1) that the statement in this case was made after a police investigation had commenced and was therefore a statement to the Police under S. 112 of the Criminal Procedure Code; (2) that a statement made in the course of a police investigation is absolutely privileged.

*Cases referred to:—*

(1) *Samuel and Athimoolam v. Public Prosecutor* Criminal Appeal No 53 of 1946.

(2) *Royal Aquarium and Summer and Winter Garden Party v. Parkinson* (1892) 1 Q.B. 431 at p. 442.

(3) *Methuram Dass v. Jaggannath Das* I.L.R. 28 Cal. 794.

(4) *Dawkins v. Lord Rokeby* (1875) L.R. H.L. 744.

CIVIL APPEAL.

*Regester* for the Appellant.

*Hastings* for the Respondent.

*Cur. Adv. Vult.*

**Willan, C. J.:**—On the 29th of July 1947 the appellant, a Price Inspector employed in the Price Control Department of Government, visited the shop of Messrs. Hardial Singh and Company situated at Nos. 45 and 47 Ampang Street, Kuala Lumpur, together with another Price Inspector of the same department, to ascertain whether any price controlled goods were exposed for sale without having affixed thereto labels clearly indicating the selling price. The respondent is the manager of that shop. A conversation

ensued in the shop between the appellant and the respondent.

Between the 29th of July 1947 and the 11th August 1947 Chief Police Inspector Chong Tuck Yew received instructions from the Officer-in-charge of the Criminal Investigation Department to investigate certain information that a Price Inspector had attempted to obtain an illegal gratification. In consequence of those instructions the Chief Police Inspector, on the 11th August, 1947, sent a detective to bring the respondent to the Central Police Station, Kuala Lumpur. On arrival the respondent, according to the evidence of the Chief Inspector, made a statement, partly in answer to questions put to him by the Chief Inspector. A copy of that statement, certified as a true copy by the Officer-in-charge Police District, Kuala Lumpur South, was put in evidence at the trial. That copy is headed as a "Report" — Report No. 4407/47 — and indicates that it was signed by the Chief Inspector only.

The main issue in the Court below was whether this statement by the respondent was made under section 107 or under section 112 of the Criminal Procedure Code (Cap. 6). If made under the latter section the respondent claimed it to be absolutely privileged. Although the learned trial Judge found that a police investigation had already commenced before the statement was made, he did not come to a decisive finding that this statement had been made under section 112 of the Criminal Procedure Code. He held, however, that the statement was absolutely privileged, and, after citing several Indian cases, decided "that no distinction can be drawn between the privilege which must be accorded to an information given to a police officer under section 107 of the Criminal Procedure Code and to a statement recorded by a police officer under section 112".

When this appeal came on for hearing on the 6th of April 1949, Mr. Hall for the appellant disputed the correctness of the copy of the statement put in evidence at the trial as regards who had signed it. He alleged that it had been signed by the respondent as well as by the Chief Inspector. The importance of this is that section 107 of the Criminal Procedure Code lays down that the person giving the information shall sign it, whereas section 113 (i) provides that a person making a statement under section 112 shall not sign it.

Mr. Hall sought to put in evidence before us, without proof, an amended statement certified as a true copy by the Officer-in-Charge of the Police District, Kuala Lumpur South, showing that the statement had been signed by the respondent as well as by the Chief Inspector. As he had given no prior notice of this, Mr. Hastings, for the respondent, was unable to give his consent, and therefore the appeal was adjourned to enable the appellant to call further evidence — costs of the adjournment being granted to the respondent in any event.

The appeal came on for further hearing on the 15th of June 1949. Mr. Regester, in place of Mr. Hall, appeared for the appellant, and called both Mr. Comber, who had been Officer-in-Charge Police District, Kuala Lumpur South, at the times material to this case, and the Chief Inspector.

From Mr. Comber's evidence there is no doubt that this statement appears in the book kept under section 107 of the Criminal Procedure Code and that it was signed by both the Chief Inspector and the respondent.

Before this Court the Chief Inspector said that the statement was made under section 107 of the Criminal Procedure Code. When asked to explain why he had given evidence at the trial that the statement was made under section 112 of the Code, he could not give any satisfactory explanation. He was not a very intelligent witness and in my view he said the statement had been made under section 107 because it was recorded in the Report Book and was headed as a Report.

What did emerge clearly from his evidence before this Court was that when the respondent arrived at the Central Police Station, after being brought there by a detective, the Chief Inspector questioned him for about 15 minutes before any statement was recorded.

This Court in *Samuel and Athimoolam v. Public Prosecutor*[1] decided that the question of whether a police investigation has commenced is one of fact, and it is not for the police themselves to decide when it commenced. In the present case I am satisfied from the evidence given in the Court below and in this Court that a police investigation had commenced before the statement was made and therefore that that statement was made under section 112 of the Criminal Procedure Code. It matters not that the statement was recorded in the Report Book kept under section 107 nor that a true copy of it was typed on a form headed "Report".

That being so, is that statement absolutely privileged?

Mr. Regester, for the appellant, argued on the authority of the *Royal Aquarium and Summer and Winter Garden Party v. Parkinson*[2] that since a police investigation is not a tribunal acting in a manner

similar to that in which a Court acts, the statement was not absolutely privileged. He did not cite any English decided case showing that damages had been awarded for defamation in respect of a statement made in a police investigation.

By sections 111 and 112 of the Criminal Procedure Code, when a police officer makes an investigation :—

(1) he may require any person to attend before him;

(2) if such person does not so attend a warrant may be issued to enforce his attendance;

(3) the police officer may interrogate such person on attendance; and

(4) such person is bound to answer truly all questions put to him by the police officer making the investigation.

In India, where the law relating to a police investigation is similar to the local law, it was decided in *Methuram Dass v. Jaggannath Dass*[3] that a statement made in the course of a police investigation was absolutely privileged. The reasoning in the judgment in that case is :—

> "In the present case the investigation was required by law; it was conducted under the provisions required by the law, it was ancillary to the administration of justice. The defendant was bound by law to answer all questions put to him by the police officer conducting the investigation and was punishable if he answered untruly and what was said by him had reference to the matter under investigation. Virtually the only distinction between his position and that of an ordinary witness arises from the fact that his statement was not made in a Court of Justice, and we see no reason accordingly, to use the language of the Lord Chief Baron cited above" — that was in the case of **Dawkins v. Lord Rokeby**[4] — "why public policy should not equally prevent an action being brought against him as against a witness in an ordinary Court of Justice."

I agree with that decision and the reasoning for it.

The question was raised by the Court whether the provisions of section 113 of the Criminal Procedure Code prevent a statement made under section 112 from being given in evidence at all, even in civil proceedings, but having decided that statements made under section 112 are absolutely privileged it is not necessary for me to decide this further question. Nor, having found that the statement in this case was made under section 112 is it necessary to decide whether information to the police under section 107 is, or is not, absolutely privileged.

For the above reasons, without calling on Mr. Hastings, for the respondent, I agreed with the other members of the Court in dismissing this appeal with costs, such costs to include the costs of the adjournment of the appeal from the 6th of April 1949 to the 15th June 1949.

**Pretheroe, J.** : — I agree and have nothing to add.

**Spenser-Wilkinson, J.** : — I agree.

*Appeal Dismissed.*

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## TAN GEOK KWANG v. PUBLIC PROSECUTOR.

**[App. Crim. Juris. (Willan, C.J., Spenser-Wilkinson and Russell, JJ.) July 16, 1949]**

**[F.M. — Criminal Appeal No. 65 of 1949]**

*Emergency Regulations 1948, Regulation 4(1)(a) — Possession of revolver — Admissibility of evidence — Evidence tending to show accused was guilty of another offence — Evidence of bad character.*

In this case the appellant was charged with being in possession of a revolver. At the trial evidence was led (1) to show that a hand-grenade had been thrown from a blukar into which the appellant had run and in which no other person was found by the Police, (2) to show that the revolver found had been fired a few days previously at Sungei Bakap and (3) to show the contents of documents found in the possession of the appellant.

Held, (1) that the evidence relating to the throwing of the hand-grenade was admissible under Section 6 of the Evidence Enactment as res gestae because the group of facts forming this transaction was so connected that the exclusion of evidence relating to the hand-grenade would tend to render evidence as to other facts unintelligible; (2) that the evidence as to the firing of the revolver a few days previously should have been excluded as it tended to show that the appellant was guilty of another offence, namely the possession or the carrying and using of the same revolver three days previously; (3) that the contents of the documents should not have been admitted in evidence as it tended to show that the appellant was a man of bad character and also showed that he had been guilty of other criminal offences not contained in the charge; (4) that for these reasons the conviction must be quashed and a retrial ordered.

*Cases referred to :—*

(1) *Chong Kim Seng v. Public Prosecutor* (1949) 15 M.L.J. 109.

(2) *Noor Mohamed v. Rex* (1949) 1 A.E.R. 365.

(3) *Makin v. A. G. for New South Wales* (1894) A.C. 57.

(4) *Thompson v. Rex* (1918) A.C. 221.

CRIMINAL APPEAL.

*K. C. Chia* for the Appellant.

*N. L. Cohen* for the Respondent.

*Cur. Adv. Vult.*

The judgment of the Court of Appeal was delivered by :—

**Willan, C. J.** : — In this case the appellant was charged in Penang with being in possession of a .38